

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9

10 PATRICIA L. WINSTON,) No. EDCV 07-00301 SS
11 Plaintiff,)
12 v.) MEMORANDUM DECISION AND ORDER
13 MICHAEL J. ASTRUE,)
14 Commissioner of the Social)
15 Security Administration)
16 Defendant.)
17

18 Plaintiff Patricia L. Winston ("Plaintiff") brings this action
19 seeking to overturn the decision of the Commissioner of the Social
20 Security Administration (hereinafter the "Commissioner" or the "Agency")
21 denying her application for Disability Insurance Benefits ("DIB") and
22 Supplemental Security Income ("SSI"). The parties consented, pursuant
23 to 28 U.S.C. § 636(c), to the jurisdiction of the undersigned United
24 States Magistrate Judge. This matter is before the Court on the
25 parties' Joint Stipulation ("Jt. Stip."), filed on November 1, 2007.
26 For the reasons stated below, the decision of the Commissioner is
27 AFFIRMED
28

I.

PROCEDURAL HISTORY

Plaintiff filed an application for DIB and SSI on October 3, 2003. (Administrative Record ("AR") 88). Plaintiff alleged that she is disabled due to mental illness and problems with her back, thyroid, lung and stomach. (AR 101). Plaintiff notes that her disability onset date was August 1, 2003. (AR 88).

The Agency denied Plaintiff's claims for benefits initially and upon reconsideration. (See AR 26-35). On April 12, 2005, Administrative Law Judge ("ALJ") Gaulz conducted a hearing to review Plaintiff's claims. (AR 556-83). On June 23 and September 12, 2005, ALJ David Ganly conducted supplemental hearings.¹ (AR 586-601). Plaintiff, who was represented by counsel, testified. (AR 560-64, 568-82). Two medical experts, Dr. Lowell Sparks and Dr. Michael Perrotti, and vocational expert ("VE") Corinne Porter also testified. (AR 566-68, 591-601). ALJ Ganly denied benefits on December 16, 2005. (AR 15-23). Plaintiff sought review of the ALJ's decision before the Appeals Council. (AR 11). On January 31, 2007, the Appeals Council denied review, making the ALJ's decision the final decision of the Commissioner. (AR 6-8). Plaintiff commenced the instant action on March 7, 2007.

¹ At the April 12 hearing, the ALJ continued the case in order to obtain Plaintiff's medical records from doctors Samuel Dey and Peter Hilliard. (AR 583). At the June 23 supplemental hearing, the ALJ continued the case in order to obtain a psychiatric evaluation. (AR 586).

II.

THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS

To qualify for disability benefits, a claimant must demonstrate a medically determinable physical or mental impairment that prevents her from engaging in substantial gainful activity² and that is expected to result in death or to last for a continuous period of at least twelve months. Reddick v. Chater, 157 F.3d 715, 721 (9th Cir. 1998) (citing 42 U.S.C. § 423(d)(1)(A)). The impairment must render the claimant incapable of performing the work that she previously performed and incapable of performing any other substantial gainful employment that exists in the national economy. Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

To decide if a claimant is entitled to benefits, an ALJ conducts a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920. The steps are as follows:

(1) Is the claimant presently engaged in substantial gainful activity? If so, the claimant is found not disabled. If not, proceed to step two.

(2) Is the claimant's impairment severe? If not, the claimant is found not disabled. If so, proceed to step three.

² Substantial gainful activity means work that involves doing significant and productive physical or mental duties and is done for pay or profit. 20 C.F.R. §§ 404.1510, 416.910.

1
2 (3) Does the claimant's impairment meet or equal one of the
3 specific impairments listed in 20 C.F.R. Part 404,
4 Subpart P, Appendix 1? If so, the claimant is found
5 disabled. If not, proceed to step four.

6
7 (4) Is the claimant capable of performing her past work? If
8 so, the claimant is found not disabled. If not, proceed
9 to step five.

10
11 (5) Is the claimant able to do any other work? If not, the
12 claimant is found disabled. If so, the claimant is found
13 not disabled.

14
15 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari, 262 F.3d
16 949, 953-54 (9th Cir. 2001) (citations omitted); 20 C.F.R. §§
17 404.1520(b)-(g)(1), 416.920(b)-(g)(1).

18
19 The claimant has the burden of proof at steps one through four, and
20 the Commissioner has the burden of proof at step five. Bustamante, 262
21 F.3d at 953-54. If, at step four, the claimant meets her burden of
22 establishing an inability to perform past work, the Commissioner must
23 show that the claimant can perform some other work that exists in
24 "significant numbers" in the national economy, taking into account the
25 claimant's residual functional capacity ("RFC"),³ age, education and work

26
27
28 ³ RFC is "the most [one] can still do despite [one's] limitations"
and represents an assessment "based on all the relevant evidence in
[one's] case record." 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1).

1 experience. Tackett, 180 F.3d at 1099-1100; Reddick, 157 F.3d at 721;
2 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1). The Commissioner may do so
3 by the testimony of a vocational expert or by reference to the Medical-
4 Vocational Guidelines appearing in 20 C.F.R. Part 404, Subpart P,
5 Appendix 2 (commonly known as "the Grids"). Osenbrock v. Apfel, 240
6 F.3d 1157, 1162 (9th Cir. 2001). When a claimant has both exertional
7 (strength-related) and nonexertional limitations, the Grids are
8 inapplicable and the ALJ must take the testimony of a vocational expert.
9 Moore v. Apfel, 216 F.3d 864, 869 (9th Cir. 2000).

10 11 III.

12 THE ALJ'S DECISION

13
14 The ALJ employed the five-step sequential evaluation process
15 discussed above. At step one, the ALJ determined that Plaintiff had not
16 engaged in substantial gainful activity since the alleged onset of
17 disability. (AR 22). At step two, the ALJ found that Plaintiff's
18 status post thyroid cancer in 1989 with no recurrence, Type A or B mild
19 gastritis, history of asthma, irritable bowel syndrome and major
20 depression, NOS (not otherwise specified) were severe impairments.
21 (Id.). At step three, the ALJ ascertained that Plaintiff's impairments
22 did not meet or equal a listing. (Id.).
23

24 At step four, the ALJ found that Plaintiff's allegations regarding
25 her limitations were "not totally credible." (Id.). The ALJ assessed
26 that Plaintiff had the RFC to perform "a significant range of light
27 work." (AR 23). The ALJ determined that Plaintiff was not capable of
28 performing her past relevant work and had no transferable skills

1 therefrom. (Id.). However, at step five, the ALJ determined that
2 "[a]lthough [Plaintiff's] limitations do not allow her to perform the
3 full range of light work, using Medical-Vocational Rule 202.21 as a
4 framework for decision-making, there are a significant number of jobs in
5 the national economy that she could perform." (Id.). Accordingly, the
6 ALJ found that Plaintiff was not disabled. (Id.).

8 IV.

9 STANDARD OF REVIEW

10
11 Under 42 U.S.C. § 405(g), a district court may review the
12 Commissioner's decision to deny benefits. The court may set aside the
13 Commissioner's decision when the ALJ's findings are based on legal error
14 or are not supported by substantial evidence in the record as a whole.
15 Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001); Smolen v.
16 Chater, 80 F.3d 1273, 1279 (9th Cir. 1996).

17
18 "Substantial evidence is more than a scintilla, but less than a
19 preponderance." Reddick, 157 F.3d at 720. It is "relevant evidence
20 which a reasonable person might accept as adequate to support a
21 conclusion." Id. To determine whether substantial evidence supports a
22 finding, the court must "'consider the record as a whole, weighing both
23 evidence that supports and evidence that detracts from the
24 [Commissioner's] conclusion.'" Aukland, 257 F.3d at 1035 (quoting Penny
25 v. Sullivan, 2 F.3d 953, 956 (9th Cir. 1993)). If the evidence can
26 reasonably support either affirming or reversing that conclusion, the
27 court may not substitute its judgment for that of the Commissioner.
28 Reddick, 157 F.3d at 720-21.

V.

DISCUSSION

Plaintiff contends that the Commissioner's decision should be overturned for three reasons. First, she claims that the ALJ did not properly consider the opinion of functional status by Dr. Dey, the treating psychiatrist. (Jt. Stip. at 3-4). Second, she asserts that the ALJ misrepresented the evidence of Dr. Dey's clinical record. (*Id.* at 7-9). Finally, Plaintiff claims that the ALJ did not pose a hypothetical question to the VE that included all of Plaintiff's limitations and restrictions. (*Id.* at 11-13). The Court disagrees with Plaintiff's contentions and instead finds that the ALJ's decision should be affirmed.

A. Plaintiff's Claim That The ALJ Improperly Considered the Treating Psychiatrist's Opinion Does Not Warrant Remand

Plaintiff complains that the ALJ improperly considered Dr. Samuel Dey's May 14, 2001 psychiatric evaluation of Plaintiff. (Jt. Stip. at 3). Plaintiff argues that the ALJ discussed Plaintiff's global assessment of functioning ("GAF") rating⁴ as determined by Dr. Linda

⁴ A GAF rating provides a rough estimate of an individual's psychological, social and occupational functioning and is used to reflect the individual's need for treatment. *Vargas v. Lambert*, 159 F.3d 1161, 1164 n.2 (9th Cir. 1998); see also American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders 32 (4th ed., text rev. 2000).

1 Smith, the examining psychiatrist, but not as determined by Dr. Dey, the
2 treating psychiatrist.⁵ (Jt. Stip. at 4). The Court disagrees.

3
4 Although the treating physician's opinion is entitled to deference,
5 it is "not necessarily conclusive as to either the physical condition or
6 the ultimate issue of disability." Morgan v. Comm'r, 169 F.3d 595, 600
7 (9th Cir. 1999). However, if the treating doctor's opinion is not
8 contradicted by another doctor, it may be rejected only for "clear and
9 convincing" reasons. Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995)
10 (citing Baxter v. Sullivan, 923 F.2d 1391, 1396 (9th Cir. 1991)). Even
11 when the treating doctor's opinion is contradicted by the opinion of
12 another doctor, the ALJ may reject the treating doctor's opinion only by
13 providing "'specific and legitimate reasons' supported by substantial
14 evidence in the record for so doing." Lester, 81 F.3d at 830 (citing
15 Murray v. Heckler, 722 F.2d 499, 502 (9th Cir. 1983)).

16
17 Similarly, the opinion of an examining physician is entitled to
18 greater weight than that of a nonexamining physician. Lester, 81 F.3d
19 at 830. The opinion of an examining doctor, even if contradicted by
20 another doctor, can only be rejected for specific and legitimate reasons
21 that are supported by substantial evidence in the record. Id. at 830-
22 31. The ALJ can meet this burden by setting forth a detailed and
23 thorough summary of the facts and conflicting clinical evidence, stating
24

25
26 ⁵ Ninth Circuit cases distinguish among the opinions of three types
27 of physicians and other health professionals: (1) those who treat the
28 claimant (treating physicians); (2) those who examine but do not treat
the claimant (examining physicians); and (3) those who neither examine
nor treat the claimant (nonexamining physicians). Lester v. Chater, 81
F.3d 821, 830 & n.7 (9th Cir. 1995).

1 his interpretation thereof, and making findings. Magallanes v. Bowen,
2 881 F.2d 747, 751 (9th Cir. 1989).

3
4 Where the opinion of the claimant's treating physician is
5 contradicted and the opinion of a nontreating source is based on
6 independent clinical findings that differ from those of the treating
7 physician, the opinion of the nontreating source itself may serve as
8 substantial evidence. Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir.
9 1995). "[I]t is then solely the province of the ALJ to resolve the
10 conflict," id., which requires a credibility determination. Batson v.
11 Comm'r, 359 F.3d 1190, 1195 (9th Cir. 2004). An ALJ may discredit
12 treating physicians' opinions that are conclusory, brief and unsupported
13 by the record as a whole or by objective medical findings. Id.

14
15 The records of Dr. Dey's treatment begin in 2001, over two years
16 prior to August 1, 2003, the alleged onset date of Plaintiff's
17 disability. (AR 445-53). On May 14, 2001, Dr. Dey performed a mental
18 status evaluation of Plaintiff, assigning her a GAF score of 50.⁶ (AR

19
20 ⁶ GAF ratings range from 0 to 100. A rating of 41-50 denotes
21 serious symptoms (e.g., suicidal ideation, severe obsessive rituals,
22 frequent shoplifting) or any serious impairment in social, occupational
23 or school functioning (e.g., no friends, unable to keep a job). A
24 rating of 51-60 denotes moderate symptoms (e.g., flat affect and
25 circumstantial speech, occasional panic attacks) or moderate difficulty
26 in social, occupational or school functioning (e.g., few friends,
27 conflicts with peers or co-workers). A rating of 61-70 denotes some
28 mild symptoms (e.g., depressed mood and mild insomnia) or some
difficulty in social, occupational or school functioning (e.g.,
occasional truancy or theft within the household), but generally
functioning pretty well and maintaining some meaningful interpersonal
relationships.

Each ten-point range encompasses both symptom severity and level of
functioning. In situations where these components are discordant, the
GAF rating reflects the lower of the two. For example, the GAF rating

1 453). At the time of her evaluation, Plaintiff chiefly complained of
2 depression. Dr. Dey described Plaintiff "as a well developed, well
3 nourished adult who appeared in no acute physical distress":

4
5 She was mildly anxious but not agitated. She was neatly
6 dressed and fairly groomed. She was not able to establish
7 good eye contact. Her speech was clear, audible,
8 understandable and not pressured. Thoughts were relevant and
9 coherent, and verbalized in a free flowing manner. There was
10 no evidence of a florid thought disorder. [Plaintiff] denied
11 having hallucinations, or having a plan to harm herself.

12
13 (AR 453).

14
15 Dr. Dey prescribed Prozac for Plaintiff. (AR 453). Following this
16 initial evaluation, the record reflects that Dr. Dey met with Plaintiff
17 approximately twenty times at regular intervals between June 14, 2001
18 and April 14, 2005, during which he varied the prescribed medications
19 and noted her responses. (AR 445-52). Initially, Plaintiff reported
20 that the medication had "not been effective at relieving the target
21 symptoms." (AR 451-52). On November 1, 2001, Dr. Dey began prescribing
22 Celexa instead of Prozac. Plaintiff reported that the medication had
23 been at least "partially effective" at all but one of her subsequent

24
25
26
27 for an individual who presents a significant danger to herself but who
28 otherwise functions normally would be below 20. American Psychiatric
Association, Diagnostic and Statistical Manual of Mental Disorders 32-34
(4th ed., text rev. 2000).

1 sessions.⁷ (AR 445-51). On June 24 and September 16, 2004, Plaintiff
2 reported that the medication had been "more effective" at relieving her
3 symptoms. (AR 447).

4
5 The ALJ's decision contains a detailed and thorough summary of all
6 of the medical evidence documented in the record. (AR 16-20). The ALJ
7 mentioned that "[p]rogress notes from [Dr. Dey], covering the period
8 from the alleged onset date through April 14, 2005 show medication
9 follow-ups for symptoms including depression, angry outbursts, mood
10 swings, anxiety, memory impairment, panic attacks and anhedonia." (AR
11 18). In addition, the ALJ noted that Plaintiff reported to Dr. Dey that
12 "the medications are partially effective at relieving the symptoms."
13 (Id.). The ALJ also noted that Plaintiff worked as a babysitter for
14 eight hours per day for at least twenty months following the alleged
15 onset of her disability.⁸ (AR 20-21).

16
17 The ALJ reviewed the psychiatric consultative evaluation of
18 Plaintiff performed by Reynaldo Abejuela, M.D., on December 27, 2003.
19 Plaintiff informed Dr. Abejuela that she does household chores, drives,
20 cooks and handles her own money. (AR 17). Plaintiff admitted to Dr.
21 Abejuela that she "smokes marijuana about twice a week," but claims not
22

23

24 ⁷ On February 15, 2002, Plaintiff reported that Remeron, which Dr.
25 Dey had prescribed to help her sleep, produced adverse side effects the
26 day after she took it. (AR 450). Dr. Dey discontinued prescribing that
medication.

27 ⁸ The ALJ found that Plaintiff's babysitting earnings of \$552 to
28 \$648 per month during this period did not meet the minimum earnings
requirement for the work to qualify as substantial gainful activity.
(AR 16); accord 20 C.F.R. §§ 404.1574(b)(3), 416.974(b)(3).

1 to have any problem with substance abuse.⁹ (AR 17). Dr. Abejuela's
2 mental status examination showed mild depression and anxiety. However,
3 Plaintiff's reasoning and comprehension were intact. She was oriented
4 times four and able to convey her thoughts in a coherent manner.
5 Plaintiff had impaired intermediate memory, but her short term and long
6 term memories were intact. She was able to interpret a proverb and do
7 similarities. Her judgment was intact and she could perform simple
8 math. Ultimately, Dr. Abejuela opined that Plaintiff was able to follow
9 simple and complex instructions and her social and occupational
10 functioning was not severely impaired. (AR 17).

11
12 The ALJ also noted that Dr. Linda Smith performed a psychiatric
13 consultative evaluation of Plaintiff on July 28, 2005. (Id.).
14 Plaintiff told Dr. Smith that she had discontinued taking her
15 antidepressants. (Id.). Plaintiff acknowledged to Dr. Smith that "she
16 gets along well with other people." (Id.). Plaintiff stated that she
17 had been performing childcare for many years and could handle some
18 household chores such as dishwashing, cooking, driving a car and paying
19 bills. (Id.). Dr. Smith remarked that Plaintiff "did very well on the
20 mental status examination," and assigned Plaintiff a GAF rating of 61.
21 (Id.; see also supra note 6).

22
23 The ALJ properly focused his evaluation on the evidence from the
24 period in which Plaintiff claimed her disability. See 20 C.F.R. §§
25

26
27 ⁹ The ALJ rejected Plaintiff's subjective complaints, in part, due
28 to her marijuana abuse. (AR 20); accord Thomas v. Barnhart, 278 F.3d
947, 959 (9th Cir. 2002). This abuse is well-documented in Plaintiff's
medical records. (See AR 258, 296, 541).

1 404.1512(c), 416.912(c) ("You must provide medical evidence showing that
2 you have an impairment(s) and how severe it is during the time you say
3 that you are disabled. You must provide evidence . . . showing how your
4 impairment(s) affects your functioning during the time you say that you
5 are disabled") (emphasis added); cf. Lombardo v. Schweiker, 749
6 F.2d 565, 567 (9th Cir. 1984) (per curiam) (holding ALJ entitled to
7 discount examination one and a half years after relevant time period for
8 remoteness); Macri v. Chater, 93 F.3d 540, 545 (9th Cir. 1996)
9 (according less weight to examination after relevant time period than
10 one during it). During the relevant period, the ALJ fully considered
11 the evidence from Dr. Dey, which did not directly contradict the
12 evidence from either Dr. Abejuela or Dr. Smith.

13
14 The evidence in the record belies any claim that Dr. Dey's GAF
15 rating indicated that Plaintiff could not work. Plaintiff claimed that
16 at the time of her 2001 mental status evaluation, she worked forty hours
17 per week performing child care for Riverside County, earning \$648 per
18 month. (AR 102, 107). Moreover, Dr. Dey's subsequent reports indicate
19 that medication had improved Plaintiff's mental condition from its state
20 in 2001.

21
22 Furthermore, the 2001 mental status evaluation itself provided no
23 reliable evidence of disability. Dr. Dey listed no activities that
24 Plaintiff's self-reported depression would limit or preclude. The
25 overall GAF rating that Dr. Dey assigned provided inconclusive evidence
26 on this point because it could have reflected the severity of
27 Plaintiff's depression rather than any deficiency in her ability to
28 work. (See supra note 6). In fact, Dr. Dey's report suggested that

1 Plaintiff faced no functional constraints; under Axis IV, which lists
2 psychosocial and environmental problems, including occupational
3 problems. Dr. Dey noted no occupational problems. (AR 453); see
4 American Psychiatric Association, Diagnostic and Statistical Manual of
5 Mental Disorders 31 (4th ed., text rev. 2000) (hereinafter, "DSM-IV").
6

7 Moreover, GAF ratings are not dispositive in social security cases.
8 See 65 Fed. Reg. 50746, 50765 (August 21, 2000) (GAF ratings are not
9 directly correlative to Social Security severity assessments). A GAF
10 rating is only intended to be used to plan treatment and measure its
11 impact. See DSM-IV at 32. A person's GAF rating will fluctuate from
12 week to week, rendering a two-year old rating meaningless. See id. at
13 33. The ALJ's failure to reference the GAF rating in the RFC assessment
14 thus does not, by itself, make the assessment inaccurate. See Howard v.
15 Comm'r, 276 F.3d 235, 241 (6th Cir. 2002) ("While a GAF score may be of
16 considerable help to the ALJ in formulating the RFC, it is not essential
17 to the RFC's accuracy. Thus, the ALJ's failure to reference the GAF
18 score in the RFC, standing alone, does not make the RFC inaccurate.");
19 see also England v. Astrue, 490 F.3d 1017, 1023 & n.8 (8th Cir. 2007)
20 (upholding ALJ's finding that GAF rating was "not a particularly
21 illuminating measure of [the claimant's] functioning in specific
22 domains").
23

24 In sum, the ALJ's opinion properly rejected Dr. Dey's initial
25 evaluation of Plaintiff as irrelevant. Moreover, the evidence from Dr.
26 Dey's GAF rating did not contradict any of the ALJ's findings.
27 Accordingly, Plaintiff's claim does not warrant remand.
28

1 **B. Plaintiff's Claim That the ALJ Misrepresented the Evidence of the**
2 **Treating Psychiatrist's Opinion Does Not Warrant Remand**
3

4 Plaintiff also complains that the ALJ misrepresented the clinical
5 record of Dr. Dey's treatment of Plaintiff. (Jt. Stip. at 6-7).
6 Plaintiff argues that the ALJ's "brief discussion" of this topic
7 involved two "completely false" statements. (*Id.* at 7). The Court
8 disagrees.

9
10 The ALJ analyzed the record with respect to Dr. Dey's treatment of
11 Plaintiff as follows:

12
13 The psychiatric treatment records from Dr. Dey . . . show
14 partial response to psychiatric medication and no difficulty
15 with social functioning. Dr. Dey did not perform any mental
16 status examinations or administer psychological tests, but
17 [Plaintiff] did very well when she did undergo mental status
18 examination at the psychiatric consultative evaluation [with
19 Dr. Smith].

20
21 (AR 20).
22

23 Plaintiff challenges both statements. First, Plaintiff argues
24 that, contrary to the ALJ's statement, Dr. Dey's treatment notes
25 indicate that she "does indeed suffer from a mental impairment that
26 negatively impacts her social functioning, and ultimately, her ability
27 to sustain employment in any labor market." (Jt. Stip. at 8-9). In
28 addition, Plaintiff asserts that the ALJ "erroneously held that Dr. Dey

1 'did not perform any mental status examinations or administer
2 psychological tests.'" (Id. at 9).

3
4 In support of Plaintiff's first argument, Plaintiff recites a
5 litany of symptoms reported at Plaintiff's numerous sessions with Dr.
6 Dey. (Id. at 7-8). However, these symptoms reflect what Plaintiff
7 subjectively reported to Dr. Dey as opposed to Dr. Dey's objective
8 medical opinion. In his notes for each session, Dr. Dey uniformly
9 employed two phrases: "The patient reported that . . ." and "The patient
10 indicated that" (AR 445-52). His language demonstrates that he
11 was primarily reporting Plaintiff's subjective complaints, not rendering
12 an independent diagnosis or evaluation of Plaintiff.

13
14 In his initial evaluation of her, Dr. Dey noted that Plaintiff
15 reported similar symptoms. (AR 453). On that occasion, however, Dr.
16 Dey did provide his own impressions of Plaintiff, as quoted above. (See
17 supra p. 10). These remarks did not show any difficulty with social
18 functioning, in accordance with the ALJ's finding. Moreover, Dr. Dey's
19 consistent description of Plaintiff's medication as "partially
20 effective" during the relevant time period, (AR 445-51), provided
21 evidentiary support for the ALJ's finding that Plaintiff had a "partial
22 response to psychiatric medication." (AR 20).

23
24 Plaintiff also attacks the ALJ for stating that "Dr. Dey did not
25 perform any mental status examinations." (Jt. Stip. at 9 (quoting AR
26 20)). Plaintiff argues that the ALJ "misstated the record in order to
27 justify his flawed decision, which is impermissible." (Jt. Stip. at 9).

1 The scope of a statement, even what seems a precise technical one,
2 depends on its context. See Zuni Pub. Sch. Dist. No. 89 v. Dep't of
3 Educ., __ U.S. __, 127 S. Ct. 1534, 1545-46, 167 L. Ed. 2d 449 (2007);
4 see also Ali v. Fed. Bureau of Prisons, __ U.S. __, 2008 WL 169359 at
5 *17 (U.S. Jan. 22, 2008) (Breyer, J., dissenting) ("When I call out to
6 my wife, 'There isn't any butter,' I do not mean, 'There isn't any
7 butter in town.' The context makes clear to her that I am talking about
8 the contents of our refrigerator. That is to say, it is context . . .
9 that sets the boundaries of time, place, and circumstance within which
10 words such as 'any' will apply.").

11
12 Here, the ALJ had explained earlier that he was not considering the
13 entire record of Dr. Dey's treatment, but only the portion that took
14 place after the alleged onset of Plaintiff's disability. (AR 18).
15 Consequently, when the ALJ later stated that Dr. Dey had not conducted
16 any mental status examinations, he clearly referenced the same period.
17 Given the ALJ's intended temporal limitation on the scope of the word
18 "any," his statement was factually correct.

19
20 Plaintiff's arguments that the ALJ misrepresented the evidence in
21 the record do not withstand scrutiny. This claim therefore does not
22 merit remand.

23
24 **C. Plaintiff's Claim That the ALJ Did Not Pose a Complete Hypothetical**
25 **Question to the Vocational Expert Does Not Warrant Remand**

26
27 In her final claim, Plaintiff contends that the ALJ failed to
28 include all of Plaintiff's limitations in the hypothetical question to

1 the VE about job availability. (Jt. Stip. at 11-12). Plaintiff asserts
2 that the ALJ should have included a GAF score of 50, as determined by
3 Dr. Dey, into the hypothetical job seeker's profile. (Id. at 12). The
4 Court disagrees.

5
6 A hypothetical question posed to a VE must contain "all of the
7 limitations and restrictions" that are supported by substantial
8 evidence. Magallanes, 881 F.2d at 756; see also Rollins v. Massanari,
9 261 F.3d 853, 863 (9th Cir. 2001). Otherwise, the VE's testimony does
10 not suffice to carry the Commissioner's burden at step five of proving
11 ability to engage in work in the national economy. Andrews, 53 F.3d at
12 1044. Conversely, in forming the hypothetical, the ALJ need not include
13 any limitations not supported by substantial evidence in the record.
14 Robbins v. Soc. Sec. Admin., 466 F.3d 880, 886 (9th Cir. 2006) (citing
15 Osenbrock, 240 F.3d at 1163-65).

16
17 As discussed above, the ALJ properly disregarded the GAF rating of
18 50 by Dr. Dey because it occurred well in advance of the relevant time
19 period and because other evidence indicated that Plaintiff could and did
20 engage in substantial work activity at the time of the rating. As
21 further discussed above, the alleged symptoms such as "depression, mood
22 swings, irritability, anger outbursts, and social isolation and
23 withdrawal," (Jt. Stip. at 13), were subjectively reported to Dr. Dey by
24 Plaintiff and were not the doctor's objective medical findings. The ALJ
25 reasonably found that Plaintiff's "subjective complaints and alleged
26 limitations" were "not consistent with the treatment she receives" and
27 thus "not fully credible." (AR 20). Plaintiff does not dispute this
28 credibility finding. An ALJ need not incorporate into the hypothetical

1 subjective complaints and alleged limitations that he deems not
2 credible. See Bayliss v. Barnhart, 427 F.3d 1211, 1217-18 (9th Cir.
3 2005); Thomas v. Barnhart, 278 F.3d 947, 959-60 (9th Cir. 2002).
4 Accordingly, this claim does not warrant remand.

5
6 **VI.**

7 **CONCLUSION**

8
9 Consistent with the foregoing, IT IS ORDERED that Judgment be
10 entered AFFIRMING the decision of the Commissioner and dismissing this
11 action with prejudice. IT IS FURTHER ORDERED that the Clerk of the
12 Court serve copies of this Order and the Judgment herein on counsel for
13 both parties.

14
15 DATED: January 29, 2008.

/S/

16
17

SUZANNE H. SEGAL
UNITED STATES MAGISTRATE JUDGE
18
19
20
21
22
23
24
25
26
27
28